



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.01.2021

CORAM :

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THE HONOURABLE Mrs. JUSTICE R. HEMALATHA

Crl.O.P.(MD)No.15924 of 2020

and

Crl.M.P(MD)Nos.7847 and 7848 of 2020

1. Surulivel @ Samsan
 2. Ramuthai
- ... Petitioners/A Party
Vs.
1. The Inspector of Police,
odaipatti Police Station,
Theni District.
 2. The Revenue Divisional Officer,
Sub Divisional Magistrate,
Uthamapalayam,
Theni District.
- .. Respondent 1 & 2/Respondents
3. Selvakumar
 4. Anbarasi
- ... Respondents 3 & 4/B Party

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in the proceedings in Na.Ka.No.0030/2020/A2, M.C.No.014/2020, dated 05.06.2020 of the second respondent and quash the same.

For Petitioners : Mr. S. Muniyandi

For Respondents 1 & 2 : Mr. A. Robinson
Government Advocate (Criminal Side)

ORDER

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure praying to call for the records in proceedings in Na.Ka.No.0030/2020/A2, M.C.No.014/2020, dated 05.06.2020 of the second respondent and quash the same.

2. The primordial submission of the petitioners are that the impugned proceedings, dated 05.06.2020, under Section 107 Cr.P.C., issued by the second respondent against the petitioners in Na.Ka.No.0030/2020/A2, M.C.No.014/2020, is illegal and unsustainable, as it does not state the facts leading to the issuance of the said proceedings.



3.Mr.S. Muniyandi, learned counsel appearing for the petitioners relied on the decision of the Hon'ble Division Bench of this Court in **M.Krishnamurthy Vs. The Sub Divisional Magistrate Cum Revenue Divisional Officer, Krishnagiri and another, reported in 2017 (1) CTC 680**, in which, it has been held thus :

23. In our view, a show cause order under Section 107 r/w 111 can be subjected to judicial review under Section 482 Cr.P.C. or Article 226 of the Constitution of India, if on the face of it, the order does not satisfy the minimum requirements of Section 111 or that the same has been passed by a person who is not an Executive Magistrate and not otherwise. In other words, if the order does not contain the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required, only then, can the High Court interfere and not otherwise. Factual adjudication of the satisfaction expressed by the Magistrate is ruled out in view of the decision of the Supreme Court in *Vicco Laboratories (supra)*."

4.Mr.A.Robinson, learned Government Advocate, who accepts notice for the respondents, fairly conceded that the summons issued to the accused persons by the Sub Divisional Magistrate is not in consonance with the provisions laid down under Sections 107 and 111 of the Code of Criminal Procedure and therefore, the same is liable to be set aside.

5.Considering the submissions made by both the counsels, the impugned proceeding of the Sub Divisional Magistrate Cum Revenue Divisional Officer in Na.Ka.No.0030/2020/A2, M.C.No.014/2020, dated 05.06.2020, is set aside.

6.Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

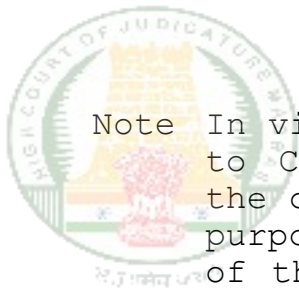
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/ /2021

Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Inspector of Police,
odaipatti Police Station,
Theni District.
2. The Revenue Divisional Officer,
Sub Divisional Magistrate,
Uthamapalayam,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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VB (09.02.2021) 3P 4C